

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DAVID WALDEN, # K-51005, )  
vs. )  
Plaintiff, )  
vs. ) Case No. 13-cv-00854-MJR  
RANDY DAVIS, )  
Defendant. )

**MEMORANDUM AND ORDER**

**REAGAN, District Judge:**

On August 19, 2013, Plaintiff filed a complaint against Vienna Correctional Center's warden, Randy Davis, pursuant to 42 U.S.C. § 1983 and the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 2671-2680, for claims arising from the conditions of his confinement at Vienna (Doc. 1). The complaint failed to state a cognizable claim under § 1983 or the FTCA. Therefore, on September 12, 2013, the Court dismissed the complaint without prejudice (Doc. 5). Plaintiff was granted leave to file an amended complaint addressing those defects noted in the original complaint on or before October 15, 2013. This deadline has since passed. Plaintiff has not filed an amended complaint.

As a result, this case is **DISMISSED with prejudice** for failure to comply with an order of this Court. FED. R. CIV. P. 41(b); *see generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). This dismissal shall count as one of Plaintiff's three allotted "strikes" within the meaning of 28 U.S.C. § 1915(g).

If Plaintiff wishes to appeal this dismissal, he may file a notice of appeal with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). A motion for leave to appeal *in forma pauperis* should set forth the issues Plaintiff plans to present on appeal.

*See* FED. R. APP. P. 24(a)(1)(C). If Plaintiff does choose to appeal, he will be liable for the \$455.00 appellate filing fee<sup>1</sup> irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur a “strike.” A timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4).

The Clerk’s Office is **DIRECTED** to close this case and enter judgment accordingly.

**IT IS SO ORDERED.**

**DATED: October 24, 2013**

s/ MICHAEL J. REAGAN  
United States District Judge

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<sup>1</sup> The appellate filing fee increases to \$500.00 for any appeal filed on or after December 1, 2013.